IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.7586 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHIVRAM VISHWANATH DESHMUKH

Versus

APPROPRIATE AUTHORITY INCOME TAX DEPARTMENT

Appearance:
MR KH KAJI for Petitioner No. 1-2
MR MANISH K KAJI for Petitioner No. 1-2
MR TANVISH U BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 22/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. This petition has been moved seeking enforcement and compliance of directions made in the judgment and order passed by this Court on 12-04-2004 in Special Civil Application No.2171 of 1997, Special Civil Application

No.3399 of 1997 and Special Civil Application No.8606 of 1996.

2. The petitioners, as owners of property entered into an agreement to sell on 25-01-1996, and in pursuance thereof filed Form No.37(I) as required by provisions of Section 269UC of Chapter XXC of the Income Tax Act, 1961 (the Act). The appropriate authority acting under provisions of the said Chapter ordered purchase of the property. The said order came to be challenged by the purchasers (SCA No.8606 of 1996) and by the vendors i.e. the present petitioners (SCA No.2171 of 1997). The petitions came to be admitted. During course of the pendency of the petitions the purchase price which was received from the Central Government was deposited with a scheduled bank in a Fixed Deposit Receipt and the said fact has come on record vide letter dated 08-04-2004 from the Deputy Commissioner of Income Tax, Appropriate Authority, Ahmedabad addressed to the learned Standing Counsel for the Revenue. As per the said letter an amount of Rs.2,40,00,000/- was initially released by the Central Government and due to the dispute regarding apportionment between the vendors and the purchasers kept in a fixed deposit on and from 30-10-1996. It is further an admitted position that the Fixed Deposit Receipt was renewed periodically and on the last date of renewal i.e. 07-02-2004 the amount had swelled to Rs.5,34,81,261. The renewal made on 07-02-2004 was for a period of 01 (one) year.

3. However, in light of the consensus arrived at between the parties the Court, without entering into any discussion on merits of the controversy, disposed off the petitions in terms of the following directions as recorded in Paragraph No.8 of the judgment and order dated 12-04-2004 :

"8. In view of the above consensus between the vendors and the purchasers, all of whom are now agreeable to the order of purchase dated 13.9.1996 being operated, acted upon and implemented, the challenges raised in these petitions are not required to be examined and the petitions are accordingly disposed of in terms of the following directions :-

(i) The order of purchase dated 13.9.1996 stands and it is open to the Income-tax authorities to act upon the same without any objection from any of the parties.

(ii) The appropriate authority shall encash the fixed deposit of Rs.5,34,81,261/- alongwith the interest thereon from 7.2.2004 and to pay over such amount in the following proportion :-

(a) Rs.115 lakhs with interest accrued thereon from 30.10.1996 till the date of encashment of the aforesaid fixed deposit shall be paid to the vendors out of which 50% shall be paid to Shri Shivram Vishwanath Deshmukh (vendor No.1) and the balance 50% shall be paid to Shri Vishvas Vishwanath Deshmukh (vendor No.2) as the Karta of HUF consisting of himself and his son Shri Ravindra Vishvas Deshmukh, after deducting at source the tax payable on the interest which has accrued on the original investment made on 30.10.1996.

(b) Similarly, the appropriate authority shall pay Rs.125 lakhs with interest accrued thereon from 30.10.1996 till the date of encashment of the aforesaid fixed deposit to the vendors - out of the said amount, 50% of the amount shall be paid to Shri Rasiklal Manikchand Dhariwal, Karta of Rasiklal Maniklal Dhariwal HUF and the balance 50% amount to Shri Prakash Rasiklal Dhariwal as a member of Rasiklal Maniklal Dhariwal HUF. These payments shall also be made after deducting at source the tax payable on the interest which has accrued on the original investment made on 30.10.1996.

(c) The above payments shall be made within two weeks from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

(d) The appropriate authority shall duly consider the request being made on behalf of the vendors as well as the purchasers that since the parties are residing at Pune, the aforesaid amounts may be paid to the respective parties through cheques/demand drafts payable at Pune.

(iii) Vendors Shri Shivram Vishwanath Deshmukh and Shri Vishvas Vishwanath Deshmukh shall handover vacant possession of the property in question to the authorized representative of the Income-tax Department within ten days from today and Shri Ravindra Vishvas Deshmukh shall not raise any objection thereto."

4. Thereafter, it appears that there was some delay in payment and exchange of correspondence between the parties as regards the payment to be made and ultimately the petitioners as well as the purchasers were paid the respective amounts of Rs.115 lacs and Rs.125 lacs respectively under cover of letter dated 21-06-2004. As the respondent failed to pay interest despite directions of the Court, the petitioners called upon the respondent to make the payment. Having failed to elicit a positive response, the present petition has been moved by the vendor - petitioners.

5. Mr.K.H.Kaji, learned advocate appearing on behalf of the petitioners, submitted that the entire conduct of the respondent has to be looked into for the purpose of appreciating the grievance made by the petitioners in the present petition. It is submitted that the petitioners, who are above 70 years of age, are being put to great inconvenience resulting in harassment and are required to incur expenses by such attitude of the respondent. It is, therefore, submitted that the petitioners be granted the reliefs as prayed for.

6. Mr.Tanvish U. Bhatt, learned Standing Counsel appearing on behalf of the respondent - Revenue, has submitted that the order dated 12-04-2004, made by this Court in SCA No.2171 of 1997 and cognate matters, was challenged by way of review applications being Misc. Civil Application Nos.1508 of 2004, 1509 of 2004 and 1510 of 2004. It is submitted by Mr.Bhatt that the review applications were moved under Section 269UG of the Act for recalling part of the directions given by the Court

in judgment dated 12-04-2004. In short, the submission was that the direction regarding payment of interest was not in consonance with the provisions of Section 269UG of the Act and as per the said provision the discretion vested with the appropriate authority as to - firstly, whether the amount should be invested, and secondly, as to whether the parties viz. the vendors and/or the vendees are entitled to any interest, and if yes, to what extent. That it was due to pendency of the aforesaid review applications that the payment was not made.

6.1 Mr.Tanvish U. Bhatt further submitted that after the review applications were rejected by order dated 27-10-2004 the appropriate authority has moved the Central Board of Direct Taxes seeking release of the funds under the proper head of the accounts and as soon as such sanction and release order is made, the funds will be paid to the petitioners.

7. The present petition came to be moved on 01-07-2004. When it came up for hearing for the first time on 07-07-2004 notice for final disposal was issued making it returnable on 23-07-2004. On 23-07-2004 a statement on behalf of the respondent was made by Mr.Tanvish U. Bhatt that the respondent had already filed an application for review and hence, the matter was adjourned. Thereafter, as the review application was not being taken up for hearing due to non-availability of the same Bench, on 25-10-2004 the Court made the following order :-

" The amount payable to the petitioners by way of interest, as directed by this Court by its order dated 12.4.2004 passed in Special Civil Applications Nos.8606/96, 2171/97 and 3399/97, shall be deposited by the respondent authority with this court on or before 4.11.2004.

S.O. to 5.11.2004. Sd/-

(A.R. Dave, J.)

Sd/-

(K.A. Puj, J.)

8. On 28-10-2004 the learned advocate for the respondent moved a Note for Speaking to Minutes wherein it was stated that by oral order dated 27-10-2004, the review applications were rejected "and the respondent authorities are directed to pay the said amount of interest on or before 30.11.2004. Besides, the said amount is lying as fixed deposit with Scheduled Bank, which is likely to mature in the first week of December, 2004."

9. In light of the Note for Speaking to Minutes, on

03-11-2004 this Court modified the earlier order of 25-10-2004 and directed that the amount shall not be deposited with this Court. Thereafter the matter has been adjourned from time to time and with consent of the parties has been taken up for final disposal as per original notice issued on 07-07-2004.

10. Mr.Tanvish U. Bhatt, learned Standing Counsel for the respondent, under instructions, states that the Fixed Deposit Receipt has matured on 09-12-2004 and has been renewed for a further period of 01 (one) month and accordingly will be maturing on 09-01-2005. It is stated that sanction which is sought for from the Board is likely to be received by then. Mr.Tanvish U. Bhatt has further stated that the respondent has already moved one more Misc. Civil Application seeking extension of time for complying with the order dated 27-10-2004 made in review application so as to enable the respondent to make payment on or before 01-02-2005, but the said Misc. Civil Application has not come up for hearing.

11. As can be seen from the order dated 12-04-2004 the Court has given specific directions to the respondent authority to encash the fixed deposit along with accrued interest and pay over the amounts to the respective parties in the proportion directed by the Court. The Court has also directed that the payment has to be of the principal amount with interest accrued thereon from 30-10-1996 till the date of encashment of the stated fixed deposit and the payment has to be made after deducting tax at source on the interest amount. The Court has further directed in Paragraph 8(ii)(c) that the payments have to be made within two weeks from the date of receipt of the writ of the Court or a certified copy of the order, whichever is earlier. The petitioners have categorically stated in the petition that a certified copy of the judgment dated 12-04-2004 was served on the respondent on 19-04-2004. As can be seen from the record the Misc. Civil Applications were filed by the respondent seeking recall of the part of the directions only on 07-07-2004, but were got circulated for the first time only on 24-09-2004, after an order came to be made in this petition on 03-09-2004. The Misc. Civil Applications came to be filed on 07-07-2004 when the Court issued notice in this petition.

12. Even in the order dated 27-10-2004 the Court has once again taken into consideration the affidavit-in-reply filed by the present respondent in SCA No.2171 of 1997 and the following extract has been reproduced in Paragraph No.2 of the order dated 27-10-2004 :

"It is submitted that the consideration amount has been deposited in the fixed deposit with a nationalized bank by the Appropriate Authority. The interest at bank-rate secured on this amount will be given along with the consideration to both the parties according to settlement between both the parties. Purchase order dated 13.9.1996 has been challenged before this Hon'ble Court by the respondent No.5 in Special Civil Application No.8606 of 1996. The proceedings in this case are pending."

(emphasis supplied)

Ultimately, after taking into consideration the merits of the submissions made by the respective parties the review applications have been rejected and the Court has categorically stated that "The department shall pay the amounts of interest which are withheld so far along with the interest accrued thereon by 15th December 2004" and rejected the applications subject to the above direction. The prayer on behalf of the petitioners to impose exemplary costs has been turned down because, according to the Court, "even the amounts of interest which have been withheld so far have been invested in fixed deposits with a scheduled bank and we have directed the applicant-appropriate authority to pay the amount of interest withheld so far along with the interest accrued thereon."

13. Thus, the position is that the respondent has categorically been directed vide orders dated 12-04-2004 as well as 27-10-2004 to make the payment of interest accrued from 30-10-1996 and further interest on the amount of interest remaining unpaid till the date of payment. As the facts stated hereinbefore go to show, the respondent authority has not been able to show any legal or factual ground on the basis of which it can withhold payment of interest despite specific directions of the Court. Any further non-compliance shall be at the peril of the respondent himself and he may lay himself open to appropriate proceedings in accordance with law.

14. The respondent is, accordingly, directed to pay over the amount of interest as per directions of this Court made in both the orders dated 12-04-2004 and 27-10-2004 along with interest till the date of payment, and for this purpose the respondent is directed to prematurely encash the fixed deposit receipt which is stated to have been renewed w.e.f. 09-12-2004. The aforesaid payment shall be made by the respondent to the petitioners forthwith, but not later than 30-12-2004.

15. The petition is, accordingly, allowed. The respondent shall pay costs to the petitioners quantified at Rs.2,500/- (Rupees Two thousand five hundred only).

16. Mr.Tanvish U. Bhatt at this stage states that the order imposing costs may not be made as no person has any personal interest to withhold the funds and that the authority did not have any powers. The contention is wholly misconceived and besides the point. Once there is an order of the Court and certain directions are made by the Court they are required to be complied with, unless and until stayed, modified, disturbed or reversed by any competent forum. Admittedly in the present case the directions issued on 12-04-2004 were not complied with and nothing has been brought on record to show that the said directions were either stayed or disturbed or modified in any manner whatsoever.

Sd/- Sd/-

[D.A.MEHTA,J] [H.N.DEVANI,J]

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'Bhavesh'